

David L. Mazaroli (DM-3929)
Attorney for Plaintiff
11 Park Place – Suite 1214
New York, NY 10007-2801
Tel. (212)267-8480
Fax. (212)732-7352
e-mail: dlm@mazarolilaw.com

-----X
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

ACE INSURANCE LTD.	:	ECF CASE
	:	
Plaintiff,	:	07 Civ. 7920 (DAB)
	:	
- against -	:	COMPLAINT
	:	
DART EXPRESS (S) PTE LTD.	:	
	:	
Defendant.	:	
	:	

-----X
Plaintiff, through its undersigned attorney, alleges as follows for its complaint against defendant:

1. Plaintiff Ace Insurance Ltd. is a corporation organized under the laws of a foreign sovereign and sues herein as the subrogated insurer of the cargo in suit, having paid the insurance claim of Creative Technology Ltd. and Creative Technology Inc. (jointly “Creative”), and for and on behalf of the shipper, consignee and owner of the cargo as their interests may appear. Plaintiff also sues to recover on behalf of Creative the deductible amounts which were not covered by the insurance payments.

2. Defendant is believed to be corporation organized under the laws of, and with its principal place of business in, a foreign sovereign.

3. This Court has jurisdiction over the person of the defendant who conducts business in New York as a common carrier of cargo and the provision of services related thereto.

FIRST CAUSE OF ACTION

4. Plaintiff repeats and realleges the allegations in paragraphs 1 through 3 of this complaint.

5. This Court has federal question subject matter jurisdiction pursuant to 28 USCA 1331. There is also pendent, ancillary and supplemental jurisdiction as to certain aspects of the claim in suit.

6. This cause of action arises under a treaty of the United States, specifically the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000, T.S. No. 876 (1934), reprinted in note following 49 U.S.C. Sec. 1502 (the "Warsaw Convention"), and certain amendments, protocols and successor treaties thereto in effect in the country of origin and destination at the time of shipment, including the Convention for Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999, reprinted in S. Treaty Doc. No 106-45, 1999 WL 33292734 (2000) (entered into force Nov. 4, 2003) ("Montreal Convention").

7. This action involves nondelivery, shortage and loss to a shipment of 1,442 cartons of MP-3 players and related electronic products, which moved, or were intended to move, from Singapore to San Francisco, California, as described more fully in Dart Express (S) Pte. Ltd air waybill DS0050024 (master air waybill 933-42516224) dated on or about September 8, 2006, and others. (Dart Express Ref.: DQS60600137)

8. Said nondelivery, shortage and loss was the result of defendant's fault, wanton neglect, and willful misconduct in that defendant, its agents, servants, connecting carriers, subcontractors, terminal operators, truck drivers, warehousemen and employees

failed to properly receive, handle, protect, carry, transfer, and care for the cargo in question and in that defendant had no proper and effective procedures to receive, handle, protect, carry, transfer and care for the cargo.

9. By reason of the aforesaid plaintiff, and those on whose behalf it sues, has sustained damages in the amount of \$518,486.93, no part of which has been paid although duly demanded.

10. Plaintiff sues herein on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

SECOND CAUSE OF ACTION

11. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 10 of this complaint.

12. Defendant's air waybill was not issued in a timely manner and did not comply with, or contain all the particulars required by, the Warsaw Convention, including Article 8.

13. Therefore, pursuant to the Warsaw Convention, including Article 9, defendants may not avail themselves of the provisions of the Convention which allegedly exclude or limit its liability.

THIRD CAUSE OF ACTION

14. Plaintiff repeats and realleges the allegations in paragraphs 1,2,3,5,7,8,9 and 10 of this complaint.

15. When the cargo was received into the care, custody and control of defendant, or those entities acting on its behalf, the cargo was in good order and

condition. However, defendant failed to make delivery of the entire cargo at the intended destination.

16. Therefore, defendant as common carrier, bailee, and/or warehouseman, is liable to plaintiff for the claimed nondelivery, shortage and loss to the cargo in suit.

FOURTH CAUSE OF ACTION

17. Plaintiff repeats and realleges the allegations in paragraphs 1,2,3,5,7,8,9 and 10 of this complaint.

18. The nondelivery, shortage and loss to the subject shipment was caused in whole or in part by defendant's material deviations from, and fundamental breaches of, the governing carriage contract.

19. As a result defendant is liable without limitation of any kind for damages in the amount of \$518,486.93.

WHEREFORE, plaintiff demands judgment against defendant:

- (a) for the sum of \$518,486.93;
- (b) for prejudgment interest at the rate of 9% per annum;
- (c) for the costs and disbursements of this action;
- (d) for such other and further relief as this Court deems proper and just.

Dated: New York, New York
September 7, 2007

LAW OFFICES,
DAVID L. MAZAROLI

s/David L. Mazaroli

David L. Mazaroli (DM 3929)
Attorney for Plaintiff
11 Park Place - Suite 1214
New York, New York 10007
Tel: (212)267-8480
Fax: (212)732-7352
E-mail: dlm@mazarolilaw.com
File No.: 7G-1445